IN THE HIGH COURT OF UTTARAKHAND ATNAINITAL.

Writ Petition No. 1491 of 2001 (M/S)
(Old CMWP No. 10743 of 1985)

1. Chhinbendra Singh,
2. Mohan Singh, both sons of Naren Singh, residents of village Bangawan, Tehsil Khatima, District Nainital.

…..…. **Petitioners.**

Versus

1. The State of U.P.
2. I Additional District Judge, Nainital.
3. Prescribed Authority S.D.M. Khatima, District Nainital, under U.P. Imposition of Ceiling on Land Holdings Act.
4. Hari Singh S/O Dr. Rameshwar Singh (deceased) through his L.R. Smt. Shanti Devi, W/O late Sri Hari Singh, Resident of village Radhuliya, Tehsil Khatima, District Nainital.

... **Respondents.**

Sri B.S.Khanka, learned counsel for the petitioners.
Sri Gopal Narain Srivastava , learned Brief Holder for the State-respondents.

Dated April 30, 2007.

Hon'ble B.S.Verma, J.

This writ petition has been preferred for issue a writ of certiorari or direction in the nature of mandamus directing the respondents no. 1 and 3 not to dispossess or evict the petitioners from the holdings that is plot no. 23, area 44 Bigha, 14 Biswa, plot no. 29, area 19 Bigha, 4 Biswa and plot no. 23 M., area 19 Bigha of village Bangawana, Tehsil Khatima, District Nainital in pursuance to the judgment dated 30-6-1976 in Ceiling Case No. 51/229 of 1975-76, State Vs. Hari Singh (Annexure No. 1 to the writ petition). Prayer has also been made to declare the order dated 24-5-1983 passed by the respondent no.3 (Annexure No. 3) and order dated 25-3-1985 passed by the respondent no.2 to be void and without jurisdiction.

The Prescribed Authority had passed the order dated 24-5-1983 to the following effect:-

"Heard the counsel for applicants. Seen the record on file. Previously an application u/s 11(2) had been rejected by this court on 18.4.81. Hence no need again to re-open the proceedings as this application is also time barred. Hence rejected."

In the course of arguments, learned counsel for the petitioners submitted that the case at hand is squarely covered by the judgment and order dated 26-04-2006 passed by this Court in Writ Petition No. 1496 (MS) of 2001 Jeet Singh (deceased) substituted by Inder Singh and others Vs. State of U.P. and 3 others, whereby the matter was remanded to the Prescribed Authority for deciding the case afresh in the light of the Judgment in the case of ***Upper Ganges Sugar Mills Ltd. Vs. Civil Judge Bijnor [1969 R.D. 202].*** In that case while dealing with the provisions of Sections 9 to 13 and Section 14 of the U.P. Imposition of Ceiling on Land Holdings Act, it was held that Section 9 to 13 are in their operation and effect independent of Section 14(3) to (7). Even though sub-sections (3) to (7) of Section 14 were on the statute book, yet the Full Bench took the view that a tenure-holder would be entitled to file an objection under Section 11(2) even though he had not been given any notice. The legislature would be presumed to have this decision in its mind when it repealed sub-sections (3) to (7) of Section 14 but did not touch the provisions of Section 9 to 13, by excluding from their purview, persons who claimed to be tenure holders, but who had not been served with a notice or statement under Section 10(2). In substance the repeal of Section 14(3) to (7) takes away the right of a lessee from a tenure-holder, to be heard.

The learned counsel for the petitioners submitted that this writ petition be decided in terms of the earlier order referred to above. The learned counsel for the State-respondents has fairly conceded that the controversy involved in the present case is

identical to that the Writ Petition No. 1496 (M/S) of 2001 decided on 26-4-2006.

I have perused the impugned judgment and orders as well as the order dated 26-4-2006 passed by this Court. The facts of the present writ petition are similar in nature to that of Writ Petition No. 1496 (M/S) of 2001. The controversy involved in the present writ petition stands resolved by the earlier order dated 26-4-2006.

Accordingly, the present writ petition is allowed in terms of the order dated 26-4-2006 passed in Writ Petition No. 1496 (M/S) of 2001. The matter is sent back to the Prescribed Authority for deciding the case afresh in the judgment in the case of ***Upper Ganges Sugar Mills Ltd. Vs. Civil Judge Bijnor [1969 R.D. 202].*** Costs easy.

Interim order dated 24-7-1985 stands vacated.

(B.S.Verma, J.)

RCP